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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,794	12/02/2003	Timothy James Lang	LNGIUSA	3337

270 7590 07/28/2005

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EXAMINER

OKEZIE, ESTHER O

ART UNIT	PAPER NUMBER
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3654

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/725,794

Applicant(s)

LANG ET AL.

Examiner

Esther O. Okezie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,8-12 and 16 is/are rejected.
- 7) ☒ Claim(s) 3,4,7 and 13-15 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/28/2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Response to Amendment

The amendment filed on 3/12/2005 and the remarks presented therewith have been carefully considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1,2,11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Montesi.
2. Re claim 1, Montesi discloses a pastry tool comprising a substantially rigid, formed, sheet having an intermediate portion (16) adapted engage a major part of the surface of one exposed end of a remainder sector of circular article pastry, said intermediate portion having first and second, parallel opposite edges, a first flange (12), unitary with said intermediate portion, and extending transversely, relative to said intermediate portion, in a first direction from said first edge, and second flange (14), unitary with said intermediate portion, and extending a second direction, opposite to said first direction, from said second edge, whereby said first and second flanges can be used interchangeably, respectively, as handle, and as a support for lifting a serving

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portion of the pastry article, and in which each said flanges has an outer edge oblique relative to said intermediate portion, whereby each flange is tapered (see fig. 2).

3. Re claim 2, each of the first and second flanges has opposite surfaces at least major portions of which are planar and parallel, and in which the planar major portions of the surfaces of both of the first and second flanges are parallel (see figure 2).

4. Re claim 11, a substantially rigid, formed, sheet having an intermediate portion (16) adapted engage a major part of the surface of one exposed end of a remainder sector of circular article pastry, said intermediate portion having first and second, parallel opposite edges, a first flange (12), unitary with said intermediate portion, and extending transversely, relative to said intermediate portion, in a first direction from said first edge, and second flange (14), unitary with said intermediate portion, and extending a second direction, opposite to said first direction, from said second edge, whereby said first and second flanges can be used interchangeably, respectively, as handle, and as a support for lifting a serving portion of the pastry article, and in which each said flanges has an outer edge oblique relative to said intermediate portion, whereby each flange is tapered, and in which said first and second flanges are tapered in opposite directions (see figs. 1 and 2: beveled edge 26 on flange 12 is tapered forward while beveled portion 42 on flange 14 is tapered backward).

5. Re claim 12, the intermediate portion (16) is rectangular.

1. Claims 1, 2, 5, 6, 9, 10, 11, 12, 16 rejected under 35 U.S.C. 102(b) as being anticipated by Harrell.

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6. Re claim 1, Re claim 1, Harrell discloses a pastry tool comprising a substantially rigid, formed, sheet having an intermediate portion (19) adapted engage a major part of the surface of one exposed end of a remainder sector of circular article pastry, said intermediate portion having first and second, parallel opposite edges, a first flange (15), unitary with said intermediate portion, and extending transversely, relative to said intermediate portion, in a first direction from said first edge, and second flange (15), unitary with said intermediate portion, and extending a second direction, opposite to said first direction, from said second edge, whereby said first and second flanges can be used interchangeably, respectively, as handle, and as a support for lifting a serving portion of the pastry article, and in which each said flanges has an outer edge oblique relative to said intermediate portion, whereby each flange is tapered (13).

7. Re claim 2, each of the first and second flanges has opposite surfaces at least major portions of which are planar and parallel, and in which the planar major portions of the surfaces of both of the first and second flanges are parallel (see fig 2).

8. Re claim 5, the outer edge of each of said flanges is spaced from said intermediate portion, each said outer edge having a first end and a second end, the distance from each said first end to said intermediate portion being greater than the distance from each said second end to said intermediate portion (see fig 2).

9. Re claim 6, the outer edge of each of said flanges is substantially straight and oblique relative to said intermediate portion, whereby each of said flanges has a trapezoidal shape (fig 4).

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10. Re claim 9, each of said flanges has longer and shorter edges, both extending from said intermediate portion to its outer edge, and in which at least said outer edge is beveled (fig 4).
11. Re claim 10, each of said flanges has longer and shorter edges, both extending from said intermediate portion to its outer edge, and in which at least said outer edge of each flange, and at least a part of each of said longer and shorter edges extending from said outer edge, are beveled (fig 4).
12. Re claim 11, each of said flanges has an outer edge oblique relative to said intermediate portion, whereby each flange is tapered, and in which said first and second flanges are tapered in opposite directions (see fig 2).
13. Re claim 12, the intermediate portion (19) is rectangular.
14. Re claim 16, said first and second flanges are tapered in opposite directions (see fig 2).

Claim Rejections - 35 USC § 103

2. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harrell in view of Piche. Harrell discloses the pastry tool may be constructed from metal, synthetic plastic materials, or wood. Harrell does not disclose polycarbonate resin, however it is well known that resin is chiefly used in plastics, furthermore resin is "usually transparent or translucent and yellowish brown in color" (Merriam Webster Dictionary Online: resin). Piche discloses a foodstuff slicer and server shown slicing a cake in figure 1 and constructed from synthetic resin. It would have been obvious to one of ordinary skill in

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the art as a matter of design choice to construct the tool from synthetic resin as resin is known to be applied to plastic to increase the overall stiffness of the material (Kelly US-4969,268 "Kitchen Utensil"; col. 2, lines 40-45).

Allowable Subject Matter

Claims 3,4,7,13,14,15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A. Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO


KATHY MATECKI
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